

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
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Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 13, 2007

TO: Persons on the Attached Mailing List

RE: Docket No. 2007-1165-AIR

H & B Contractors, Ltd.

Request(s) filed on Permit No. 2345; Account No. MB0055U

The above-referenced application and all timely filed hearing requests/requests for reconsideration on the above-referenced application will be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during the public meeting on **October 24, 2007**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with commission rules, copies of the timely hearing requests/requests for reconsideration have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. Each of these persons is entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **October 1, 2007**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **October 15, 2007**.

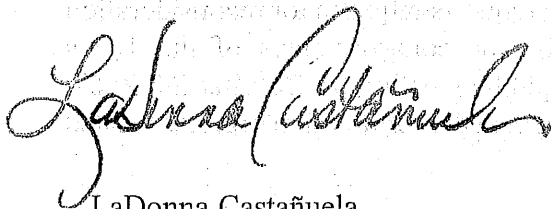
An original and 11 copies of any response or reply must be filed with the Chief Clerk of the TCEQ. The address of the Chief Clerk is: Office of Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 [Fax number (512) 239-3311]. On the same day any response is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, the Applicant and the requesters at their addresses listed on the attached mailing list. On the same day any reply is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, and other requesters and the applicant at their addresses listed on the attached mailing list.

The procedures for evaluating hearing requests/requests for reconsideration are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F (§§55.200-211) of the commission's rules. The procedures for the filing of responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§§55.209) of the commission's rules. Copies of these rules may be obtained by calling the Office of Public Assistance toll free at 1-800-687-4040.

The commissioners will not take oral argument or additional comment on this matter at the public meeting. Therefore, it is important to address the sufficiency of the requests in timely filed written responses and requesters' replies. At the public meeting, the commissioners may ask questions of the applicant, requesters, or TCEQ staff. The commissioners will make a decision on the request(s) during the meeting and will base that decision on the timely written requests, public comments, any written responses and replies, any responses to questions during the meeting, and applicable statutes and rules. Copies of all timely public comments and requests have been forwarded to the Office of Alternative Dispute Resolution to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand how the TCEQ processes and evaluates hearing requests and requests for reconsideration. To obtain additional information, or to ask questions about anything in this letter, please call the TCEQ's Office of Public Assistance toll-free at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

Enclosures: Copy of the Executive Director's Response to Comments. Copies of protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, Office of Public Assistance and Alternative Dispute Resolution.

ATTACHMENT

Procedures Concerning Requests for Reconsideration and Requests for Contested Case Hearing

The purpose of this document is to describe commission procedures for evaluating requests for reconsideration and requests for contested case hearing. This document is not intended to be a comprehensive guide to public participation at the TCEQ.

The three commissioners determine the validity of requests for reconsideration and requests for contested case hearing and vote to grant or deny the requests during a public meeting. These public meetings are usually held every other Wednesday in Austin. Prior to the meeting, the following occurs:

- 1) the written requests are distributed to the executive director, the public interest counsel, and the applicant. These persons may file a response at least 23 days before the meeting;
- 2) the requester may then file a reply to the responses at least 9 days before the meeting. This is the requester's opportunity to address any deficiencies in the request that have been identified by TCEQ staff or the applicant. The requester must submit any information he or she wishes the commissioners to consider (ex: maps or diagrams showing requester's location relative to the applicant's proposed activities) by this deadline; and
- 3) the commissioners read the requests, the responses to requests, and the replies, before the public meeting. Then, during the public meeting, the commissioners vote to grant or deny the requests.

Requests for Reconsideration

A request for reconsideration must expressly state that the person is requesting that the commission reconsider the executive director's decision and state the reasons why the commission should reconsider the executive director's decision. The commission will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

Requests for Contested Case Hearing

A contested case hearing is an evidentiary proceeding, similar to a hearing in civil court. The law allows for holding a contested case hearing on certain types of applications.

A valid request for a contested case hearing must:

- 1) demonstrate that the requester is an "affected person" with a "personal justiciable interest" related to a legal right, duty, privilege, power or economic interest which would be affected by the application in a manner not common to the general public;
- 2) if the request is made by a group or association, identify one or more members who have standing to request a hearing, and the interests the group or association seeks to

- protect;
- 3) expressly request a contested case hearing;
- 4) raise disputed issues of fact that are relevant and material to the commission's decision on the application which were raised during the comment period and not withdrawn prior to the filing of the Executive Director's Response to Comment; and
- 5) include any other information as specified in public notices.

The commission is authorized to protect human health and safety, and natural resources. The commission cannot address other matters outside the commission's authority, such as the effect of the existence of a proposed facility on nearby property values.

When the commissioners deny hearing requests, they often proceed to vote on approval or denial of the application. Alternatively, they may remand the application to the executive director for final action. If a hearing request is granted and the application is referred to the State Office of Administrative Hearings (SOAH), the commissioners will specify a list of issues which will be the subject of the hearing and an expected date for the SOAH judge's proposal for decision. The SOAH judge will conduct the hearing and submit a proposal to the commission to approve or deny the application.

The Alternative Dispute Resolution Office may contact requesters to determine their interest in informal discussions with the permit applicant and a mediator.

By necessity this document gives a very general description of commission procedures. If you have any questions, please call OPA toll-free at 1-800-687-4040.

MAILING LIST
H & B CONTRACTORS, LTD.
DOCKET NO. 2007-1165-AIR, PERMIT NO. 2345; ACCOUNT NO. MB0055U

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FOR OFFICE OF PUBLIC ASSISTANCE:

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FOR ALTERNATIVE DISPUTE
RESOLUTION:

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Alternative Dispute Resolution, MC-222
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FOR THE CHIEF CLERK:

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REQUESTER:

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INTERESTED PERSONS:

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Angela Harrison
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Bernd Hirsch
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Donald James
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TCEQ AIR PERMIT NO. 2345

APPLICATION BY § BEFORE THE
H & B CONTRACTORS LTD § TEXAS COMMISSION ON
WACO, MCLENNAN COUNTY § ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Permit Renewal application from H & B Contractors (Applicant). As required by 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director (ED) shall prepare a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following person: Mr. John Angerman (commenter). This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for an air quality permit renewal that would authorize the Applicant to continue operation of a hot mix asphalt plant located at 2017 East Tinsley Road, Waco, McLennan County (the plant). The renewal, if approved, will not authorize the construction of any new facilities or any increase in hourly or annual production. The permit renewal would not result in an authorized increase in emissions because the plant would continue to have production limits that do not exceed previous production limits. The applicant received a permit amendment in February 2007 authorizing the use of first run No. 2 fuel oil (in addition to previously authorized natural gas) to power the drum/dryer. In conjunction with the recent amendment, a diesel storage tank, lime silo and associated conveyance system, and replacement burners on the drum dryer previously authorized by permits by rule were incorporated into the permit. Also, in 2003 the applicant obtained a standard permit for a pollution control project which authorized it to replace the water scrubber with a fabric filter baghouse as a control device for the drum dryer. The fabric filter baghouse provides for superior control of particulate matter and equivalent control of other contaminants emanating from the drum dryer. The fabric filter baghouse was incorporated into the permit at the time of the aforementioned amendment. Emissions of contaminants authorized under this permit

include nitrogen oxides, carbon monoxide, sulfur dioxide, lead, particulate matter including particulate matter less than 10 microns in diameter, and organic compounds (including but not limited to asphalt and diesel vapors).

Procedural Background

The permit application was received on November 24, 2004, and declared administratively complete on January 6, 2005. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) for this permit application was published on January 26, 2005 in the *Waco Tribune-Herald* and alternative language notice was published on January 26, 2005 in *Tiempo*. The NORI was republished on April 4 and 5, 2007, in the *Waco Tribune-Herald* and alternative language notice was published on April 4, 2007, in *Tiempo*. The fifteen day comment period ended April 20, 2007. The NORI was republished voluntarily due to the intervening permit amendment. The application was technically complete on May 9, 2007.

COMMENTS AND RESPONSES

COMMENT 1: The commenter expresses concerns regarding health impacts from air emissions authorized by this permit, especially breathing difficulties and cancer risk. The commenter also expresses concern that air emissions from the hot mix asphalt plant will adversely affect air quality in the area.

RESPONSE 1: In 2003, a more effective control device, a fabric filter baghouse, was installed on the drum dryer as a replacement for the water scrubber. The fabric filter baghouse has four times the control efficiency for particulate matter from the stack than the previously utilized wet scrubber. When this permit was amended in February 2007, modeling was performed and the plant was deemed to not pose a risk to public health.

This plant is seeking authorization to continue operating at a production rate of 200 tons/hour of asphalt. The TCEQ has developed a standard permit for hot mix asphalt plants. Extensive computer air quality modeling was completed in conjunction with drafting the standard permit. From the modeling, TCEQ concluded that a plant similar to the subject plant producing 200 tons/hour of hot mix asphalt should not pose any adverse health or welfare effects for people living at least 375 feet from the plant.

This permit renewal meets all applicable TCEQ toxicology and risk assessment health effects guidelines. The emissions were modeled to ensure all resultant contaminant concentrations would meet the National Ambient Air Quality Standards (NAAQS) and TCEQ effects screening levels (ESLs). The NAAQS are created by the United States Environmental Protection Agency (EPA), and as defined in the federal regulations (40 Code of Federal Regulations § 50.2), include both primary and secondary standards. The primary standards are those that the Administrator of the EPA determines are necessary, with an adequate margin of safety, to protect the public health, including sensitive members of the population such as children, the elderly, and individuals with existing

lung or cardiovascular conditions. The NAAQS are set for the six criteria pollutants, which are nitrogen dioxide, sulfur dioxide, ozone, carbon monoxide, lead, and particulate matter. The state's health and welfare based ESLs cover contaminants not included in the NAAQS and are designed to be protective of the aforementioned sensitive receptors. An ESL is a conservative guideline concentration that is meant to serve as a screening tool. As such, the ESL has multiple built-in safety factors. Because of the safety factors, the conservative guideline concentration is considered to be protective of the general population, which includes the very young, the elderly, and people with pre-existing health conditions. Secondary NAAQS are those that the EPA determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. The protectiveness review included primary and secondary NAAQS and TCEQ ESLs and concluded, provided the plant is operated as required, the emissions authorized in the renewal permit are set to be protective of all those receptors.

Furthermore, all facilities applying for a permit renewal under 30 TAC § 116.311 must also comply with all applicable TCEQ air quality rules and regulations. 30 TAC § 101.4 states "no person shall discharge from any source, air contaminants which are or may tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." So long as this asphalt plant is operating within the terms and conditions of the permit, and applicable rules and regulations, no adverse effects to human health, the environment, air quality, or the public welfare are expected.

If local citizens believe the applicant is operating outside the terms of the permit, or other TCEQ rules and regulations, they are encouraged to call the TCEQ Environmental Complaints Hotline at (888) 777-3186, or the TCEQ Waco Regional Office at (254) 751-0335.

COMMENT 2: The commenter expresses concern that operation of the proposed hot mix asphalt plant will result in nuisance conditions related to noise.

RESPONSE 2: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in Texas Health & Safety Code chapter 382, the Texas Clean Air Act (TCAA). Accordingly, the TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve or deny an air permit application. If you have concerns regarding noise issues, which are not within the jurisdiction of the TCEQ, please contact your city or county officials.

COMMENT 3: The commenter expresses concern about the proximity of the plant to residences in the area, including the commenter's residence.

RESPONSE 3: The TCEQ does not have zoning authority, and it is therefore beyond the agency's power to regulate an applicant's site selection. Further, the TCEQ cannot require an applicant to relocate, or prohibit an applicant from locating at a particular site,

if they meet any specific distance limitations or setback requirements that are enforceable by the TCEQ. Zoning is usually controlled by local municipalities.

COMMENT 4: The commenter states he is opposed to the renewal of the air quality permit, and asks the TCEQ to deny the renewal.

RESPONSE 4: The ED has reviewed the permit application in accordance with the applicable law, policy and procedures, and the Agency's mission to protect the State's human and natural resources consistent with sustainable economic development. Although the ED recognizes the opposition of the commenter, public opposition alone is not legally sufficient to justify denial of a permit application. The TCAA mandates the TCEQ must issue the permit if all criteria are met.


Changes Made in Response to Public Comments

No changes to the permit have been made in response to public comment.

Respectfully submitted,
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Glenn Shankle
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services


Dede Sigman, Staff Attorney
Environmental Law Division
State Bar No. 24044640

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on July 11, 2007, the "Executive Director's Response to Public Comment" for renewal of Permit No. 2345 (air) was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Dede Sigman, Staff Attorney
Environmental Law Division
State Bar No. 24044640

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
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